

APPEAL NO. 010880

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on April 3, 2001. The hearing officer determined that the compensable injury of _____, was not a producing cause of the appellant's (claimant) bulging discs at L4-5.

The claimant appealed, citing his testimony that he told every doctor about his back and that Dr. F hardly checked his back. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The claimant was employed as a "rover/sacker/stocker" by a grocery store chain. The parties stipulated that the claimant sustained a compensable (neck and shoulder) injury on _____. The claimant described the circumstances of his injury, including that he felt pops in his neck, shoulder, and low back picking up a sack of canned goods. The claimant was sent to the (clinic) a few days later and the clinic report notes "pain extends from base of neck to mid to lower back." A notice of injury dated _____, claims only "a sharp pain in [claimant's] left shoulder, left ribs and left arm." The claimant saw a number of doctors over the ensuing years and although the claimant adamantly testified that he complained of back pain to all of these doctors, most do not mention back complaints in their records. The claimant had another CCH in July 1992 where the hearing officer in that case determined that the claimant had "suffered a compensable injury to his left shoulder, arm and neck." There was no mention in that decision of back complaints. The claimant eventually began treating with Dr. P, a chiropractor, in July 1994. In a report dated July 1, 1994, Dr. P diagnosed a lumbosacral strain/sprain (in addition to the claimant's neck and shoulder injuries). Dr. P treated the claimant's complaints with chiropractic manipulation. The claimant saw a number of other doctors before being referred to Dr. F, who in a report dated July 3, 1996, noted:

He has new complaints of thoracic and lower back pain today. These are new complaints; however, the patient states that he has had dorsal and lower back pain since his original injury, although to me, these are new complaints today.

Dr. F indicated that he believed the back complaints were related to the claimant's cervical injury. Dr. G, in a report dated March 23, 1998, noted "suddenly increasing low back pain" and ordered an MRI. The MRI performed on March 26, 1998, showed disc protrusions at L4-5 and L5-S1. The claimant had a number of other medical problems over the years which the hearing officer mentions before concluding that when "all the evidence was considered, Claimant did not establish that he sustained a back injury at work on _____."

At best, the evidence is conflicting. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.65(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Philip F. O'Neill
Appeals Judge